



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2014-0751; FRL-9952-33-Region 4]

**Air Plan Approval/Disapproval; MS Infrastructure Requirements for the 2010 NO₂
NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve in part, and disapprove in part, portions of the State Implementation Plan (SIP) submission, submitted by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ) on February 28, 2013, to demonstrate that the State meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour nitrogen dioxide (NO₂) national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure” SIP. The MDEQ certified that the Mississippi SIP contains provisions that ensure the 2010 NO₂ NAAQS are implemented, enforced, and maintained in Mississippi. With the exception of the state board majority requirements respecting significant portion of income, for which EPA is disapproving, EPA has determined portions of Mississippi’s SIP submission, provided to EPA on February 28, 2013, satisfies certain required infrastructure elements for the 2010 1-hour NO₂ NAAQS.

DATES: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2014-0751. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8726. Mr. Richard Wong can also be reached via electronic mail at wong.richard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On January 22, 2010, (published at 75 FR 6474, February 9, 2010), EPA promulgated a new 1-hour primary NAAQS for NO₂ at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 NO₂ NAAQS to EPA no later than January 22, 2013.

In a proposed rulemaking published on May 24, 2016, EPA proposed to approve Mississippi's 2010 1-hour NO₂ NAAQS infrastructure SIP submission submitted on February 28, 2013, with the exception of the preconstruction PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of (D)(i), and (J), the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), and the state board majority requirements respecting significant portion of income of 110(a)(2)(E)(ii). On March 18, 2015 (80 FR 14019), EPA approved Mississippi's February 28, 2013, infrastructure SIP submission regarding the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J) for the 2010 1-hour NO₂ NAAQS. Therefore, EPA is not taking any action today pertaining to sections 110(a)(2)(C), prong 3 of D(i), and (J). Additionally, on May 25, 2016,

EPA took final action on prong 4 of D(i) element of Mississippi's February 28, 2013, SIP submission for the 2010 1-hour NO₂ NAAQS and is not acting on this prong in this action. *See* 81 FR 33139. With respect to the interstate transport requirements of section 110(a)(2)(D)(i)(I) (prongs 1 and 2), Mississippi provided a separate submission on July 14, 2016. EPA is considering action on Mississippi's submission related to 110(a)(2)(D)(i)(I) (prongs 1 and 2) through a separate action. The details of Mississippi's submission and the rationale for EPA's actions for this final rulemaking are explained in the May 24, 2016, proposed rulemaking. Comments on the proposed rulemaking were due on or before June 23, 2016. EPA received no adverse comments on the proposed action.

II. Final Action

With regard to the state board majority requirements respecting significant portion of income, EPA is finalizing a disapproval of Mississippi's February 28, 2013, infrastructure submission. Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a CAA Part D Plan, or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP call), starts a sanctions clock. The portion of the submittal being disapproved in this notice (the portion addressing certain provisions of section 110(a)(2)(E)(ii)) was not submitted to meet requirements for Part D or a SIP call, and therefore, no sanctions will be triggered. However, this final action will trigger the requirement under section 110(c) that EPA promulgate a Federal Implementation Plan (FIP) no later than two years from the date of the disapproval unless the State corrects the deficiency, and EPA approves the plan or plan revision before EPA promulgates such FIP. With the exceptions described above, EPA is taking final action to approve Mississippi's infrastructure SIP

submission for the 2010 1-hour NO₂ NAAQS because these portions of the submission are consistent with section 110 of the CAA.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after

it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days after date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 2, 2016.

V. Anne Heard,
Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart Z - Mississippi

2. Section 52.1270(e), is amended by adding an entry for “110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO₂ National Ambient Air Quality Standard” at the end of the table to read as follows:

§52.1270 Identification of plan.

* * * *

(e) * * *

EPA Approved Mississippi Non-Regulatory Provisions

| Name of nonregulatory SIP provision | Applicable geographic or nonattainment area | State submittal date/effective date | EPA approval date | Explanation |
|-------------------------------------|---|-------------------------------------|-------------------|-------------|
| * | ** | ** | * | * |

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|---|-------------|------------|---|--|
| 110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO ₂ National Ambient Air Quality Standard | Mississippi | 02/28/2013 | [Insert date of publication in <u>Federal Register</u>], [Insert Federal Register citation] | With the exception of sections: 110(a)(2)(C) and (J) concerning PSD permitting requirements; 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4) concerning interstate transport requirements and the state board majority requirements respecting significant portion of income of section 110(a)(2)(E)(ii). |
|---|-------------|------------|---|--|

3. Section 52.1272 is amended by adding a paragraph (d) to read as follows:

§ 52.1272 Approval status.

* * * * *

(d) *Disapproval.* Submittal from the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ) on February 28, 2013, to address the Clean Air Act section 110(a)(2)(E)(ii) for the 2010 1-hour nitrogen dioxide (NO₂) National Ambient Air Quality Standards (NAAQS) concerning state board majority requirements respecting significant portion of income of section 128(a)(1). EPA is disapproving MDEQ's submittal with respect to section 110(a)(2)(E)(ii) because a majority of board members may still derive a significant portion of

income from persons subject to permits or enforcement orders issued by the Mississippi Boards, and therefore, its current SIP does not meet the section 128(a)(1) majority requirements respecting significant portion of income for the 2010 1-hour NO₂ NAAQS.

[FR Doc. 2016-22226 Filed: 9/15/2016 8:45 am; Publication Date: 9/16/2016]